IN THE SUPREME COURT OF THE STATE OF NEVADA.

In the Matter of the Application of Peter Kair, For a Writ of Habeas Corpus.

In the Justice Court at Dayton petitioner was convicted and sentenced to pay a fine of $100 or serve an alternative of one day for every two dollars thereof in the County jail on a charge of misdemeanor, for working more than eight hours in one day in a wet crushing quartz mill, contrary to the provisions of the Act approved February 23, 1903, by the terms of which the period of employment of working men in underground mines, smelters and "all institutions for the reduction or refining of ores or metals" is limited to eight hours per day, under penalty which specifies a fine of not less than $100 nor more than $500, or imprisonment in the County jail not exceeding six months, or both. (Stat., 1903, P. 33) Upon failure to pay the fine imposed he was committed to the custody of the Sheriff of Lyon County, and by a writ of habeas corpus demands of this Court his release, asserting that the Statute mentioned is unconstitutional and cannot be enforced to limit his liberty to contract or to work more than eight hours per day under Section 1 of Article 1 of the organic act of this State which guarantees the right to acquire and possess property, and that it is also in conflict with the eighth amendment of the federal constitution which directs that excessive fines and cruel and unusual punishment shall not be imposed.

In re Boyce 27 Nev. 299, 75 P. I, 65 L. R. A. 47 , we had occasion to give the act in question extended consideration, and held that it was Constitutional and enforceable against one who worked longer than eight hours per day in an underground mine. After more mature reflection we are still satisfied with the reasoning and conclusion reached in that opinion, and it is unnecessary to repeat them to any great extent. We there hold, as a matter of common knowledge, that prolonged labor in the places mentioned in the Statute was injurious, and if necessary to resort to that power that the legislature were warranted in passing that act as a police or health regulation for the protection of the men employed in those places, and the benefit to the State. In the present case it is sought to avoid this reason or justification for the enforcement of the act by stipulation that the occupation followed by petitioner was not injurious, and by testimnoy that labor performed in wet crushing quartz mills is not unhealthy, except for the men working around pans and settlers.

Adhering to our opinion in re Boyce, "we are not prepared to say that the mining, milling and smelting of ores are not avocations so unhealthy and hazardous that they may not come under the protecting arm of the legislature; but to recognize these conditions and pass laws for their amelioration and which may protect the health and prolong the lives of the men so employed we think is within the legitimate powers of the law making branch of our government. If these matters were uncertain when their existance is necessary to sustain the law, the doubt should be resolved in favor of the statute for, as held by this Court in several decisions, its validity will be presumed until it is clearly shown to be unconstitutional. As applicable here we repeat a part of the language by the Supreme Court of Utah which we quoted in that case, and which had been adopted by the Supreme Court of the United States as a part of the decision in Holden V. Hardy:

"Unquestionable the atmosphere and other conditions in mines and reduction works differ. Poisonous gases dust and impalpable substances arise and float in the air in stampmills, smelters and other works in which ores, containing metals, combined with arsenic or other poisonous elements or agencies, are treated, reduced and refined; and there can be no doubt that prolonged effort day after day, subject to such conditions and agencies, will produce morbid, noxious and other deadly effects in the human system. Some organisms and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The Legislature has named eight. Such a period was deemed reasonable. The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters, and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters, and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the Legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the Legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer."

It is a matter of common knowledge that the health of many men is impaired by labor in quartz mills. If by taking proof that others are not injured, the Statute is to be declared void or inoperative as to them, we enter a wide field of uncertainty and speculation, and instead of having the constitutionality of the Act rest upon solid ground and a sure foundation, its enforcement would become subject to the more or less speculative opinions of interested parties and others and to the conclusions of various justice courts and juries regarding the probability of injury to men working longer or shorter periods in the places mentioned and witnesses could testify regarding the consequences to health from labor in these employments and thereby indirectly regarding the necessity for legislative action and the validity of the Statute in each case as it arose. If exceptions based upon such proof are to be made to the enforcement of the Act, they might depend not only upon the character of the mill and the distinguishing features of the work of the various men employed, but upon the age, constitution, vitality and probable endurance of the different employees, the ingredients used in working the ores such as quicksilver- cyanide or other chemicals injurious to health, the the quantity and effect of dust and fumes, the character of the ores and whether they contained lead, arsenic or other harmful substances from day to day, or upon other conditions and uncertainties which would multiply litigation, and lead to doubt and difficulty in securing the benefits intented by this legislation.

Although Courts should be careful not to usurp the powers delegated to the law making branch of the government, and should not receive evidence regarding facts of which they are satisfied by judicial knowledge and although all reasonable doubts should be resolved in favor of the action of the Legislature and constitutionality of the statute, yet we are not prepared to say that there is any conclusive presumption in favor of any fact essential to support the validity of the enactment as being within the police power of the State, or that the court having proper jurisdiction may not receive proof regarding any controlling fact which is in doubt. A review of the decisions indicated that the Courts have acted in cases similar to the one under consideration, generally upon judicial cognizance, or if in doubt have accepted the judgment of the legislature or received proof.

Chief Judge Parker, speaking for the Court in People v. Lochner, 177 N. Y. 145, in an opinion filed one day after ours in the Boyce case, reviewed many of the authorities, pointed out the wide scope of the police power which the federal Supreme Court has often held to be vested in the legislatures of the various states notwithstanding the fourteenth amendment, cited with approval People v. Havnor 149 N. Y. 145 (43 N. E. 541, 31 L. R. A. 689. 52 A M St. R. 707) which upholds an act regarding barber shops, and found as a matter of judical knowledge that work in bakeries and confectioners establishments was unhealthy and for that reason sustained the New York Statute restricting the hours of labor in those places.

Twenty days after the filing of the opinion in re Boyce and before publication of it had likely reached there, the Supreme Court of Missouri after a careful consideration of the authorities, the case being on appeal, held that the act limiting labor to eight hours a day in underground mines in that State was Constitutional, that the validity of the statute could not be made dependent upon the opinions of experts as to the necessity for such enactment, and that the testimony of physicans, mining engineer and foreman and of one who had worked thirty four years in the mines, could not be received to prove that such underground work was not more injurious to health than laboring the same number of hours on the surface. Justice Fox, all the justices concurring, said: "Defendant sought to introduce testimony of expert witnesses tending to show that the underground work contemplated by this act of the Legislature was not attended with danger to the health to those engaged in the performance of such work. This testimony was excluded by the Court, and, in our opinion, correctly so. The validity of laws enacted in the exercise of the police power of the State cannot be made dependent upon the views of experts as to the necessity of such enactment. If the constitutionality of all laws enacted for the promotion of public health and safety can be assailed in this manner, truly and sadly would it be declared that our laws rest upon a very, weak and unstable foundation.

State v. Cantwell, 179 Mo. 245 — 78 S. W. 569.

In Powell v. Pennsylvania 127 U. S. 678 Plaintiff in error was convicted and fined $100 for selling packages of an article of food marked Oleomargine Butter, under a statute of that state prohibiting the manufacture out of oleaginous substances or out of any Compound thereof other than that producted from unadulterated milk or cream, of any article designed to take the place of butter or cheese and making it unlawful to sell the same. On the trial the accused offered to prove that the article was made from pure animal fat; that the process of manufacture was clean and wholesome, the article containing the same elements as dairy butter, the only difference between them being that the manufactured article contained a smaller proportion of the fatty substance known as butterine; that the only effect of butterine was to give flavor to the butter and that it had nothing to do with its wholesomeness; that the article sold to the prosecuting witness was a nutritious article of food, in all respects as wholesome as butter produced from pure unadultrated milk or cream; that for the purpose of manufacturing and selling this oleomargarine he had invested large sums in real estate, machinery and ingredients; that in his traffic in this article he made large profits; and if prevented from continuing it the value of his property employed therein would be entirely lost, and he be deprived of the means of livelihood.

The rejection of this proof by the trial court and the conviction and judgment against the accused were were sustained by the Supreme Court of that State of the United States, and Justice Harlan, in delivering the opinion for the latter tribunal said: "It will be observed that the offer in the court below was to show by proof that the particular article the defendant sold, and those in his possession for sale, in violation of the statute, were in fact, wholesome and nutritious articles of food. It is entirely consistent with that offer that many, indeed, that most kinds of oleomargarine butter in the market contain ingredients that are, or may become injurious to health. The Court cannot say from anything of which it may take judicial cognizance, that such is not the fact. Every possible presumption, Chief Justice Wait said, speaking for the Court in Sinking Fund Cases, 99 U. S. 700, 718 is in favor of the validity of the statute, and this continues until the contrary is shown beyond a rational doubt.

One branch of the government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.

See, also Fletcher v. Peck—6 Cranch 87—128 Dartmouth College v. Woodward, 4 Wheat 518—625 Livingston v. Dartington, 101 U. S. 407 XXX And as it does not appear upon the face of the Statute or from any facts of which the Court musst take judicial cognizance, that it infringes rights secured by the fundamental law, the Legislative determination of the facts is conclusive upon the Courts. It is not a part of their funcitions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will embodied in statute, as they may happen to approve or disapproved its determination of such questions. If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the Legislature, or to the ballot box, not to the judiciary.

The latter can not interfere without usurping powers committed to another branch of government."

Laws restricting the hours of labor in some form, have been enacted in many of the states, and these statutes, when relating to avocations that affect the health or safety of the people employed, have generally been sustained by the Courts as not in conflict with state or federal constitution, except in Colorado.

Aside from these cases in the Supreme Courts of the United States and of Utah and Missouri sustaining similar enactments directly limiting the hours of labor in places named in our Statute, there are many able decisions maintaining this general doctrine and upholding various acts similar in principle among which are the vigorous opinion by Justice Field in re Newman, 9 Cal. 518, later adopted by the Court in re Andrews 18 Cal. 685, and the numerous cases cited in State v. Havnor, State v. Cantwell, in re Northrup 41 Ore. 490, State v. Petit. 74 Minn 378 and in re Boyce Sanders v. Connu, 77 S. W. 358. Butler v. Chambers 36 Minn 71. State vs Beltd 99 Mich. 151. 41 Am. St 589. 57 N. W. 1904 Munn v. Illinois 94 U. S. 113.

The decisions in California and New York holding statutes that limit labor on public works to eight hours to be unconstitutional are not considered applicable here because such employment was not claimed to be unsafe or injurious to health. These cases are not only overthrown by Atkin v. Kansas, 191, U. S. 207 24 Sup. Ct. R. 124, but by the very principle advanced to sustain them, for if liberty of action and freedom of the individual to contract is to control, when the employment is not unsafe or unhealthy, certainly the State ought to have the same right to regulate the terms and conditions in its own contracts and those of its municipalities, as is accorded to individuals.

If we were not satisfied as a matter of common knowledge that prolonged labor in the employment restricted by the Statute is injurious to the health of the workmen as a class, we would determine regarding the admissibility of evidence in this connection to enlighten the court and control the judgment and act of the legislature, but being so satisfied we do not deem it expedient to allow testimony in particular or exceptional cases to defeat the constitutionality of the Act. It is not difficult to distinguish between employments which in principle are not unhealthy or injurious as a class and those which are, and a statute relating to the latter ought not be nullified nor rendered uncertain in its operation because some of its employees may possibly be exempt from injury.

If the enforcement of the statute depended upon proof of inquiry to the workmen in every case it could be contended that the justice court would have power on the trial to hear the evidence and determine the fact, and having jurisdiction if it erred in finding or failing to find, or in accepting or rejecting proof, its action would be reviewable on appeal and not on a writ of habeas corpus which would be a proper remedy if the act were entirely void and its invalidity not dependent upon varying proofs in different cases..

Exparte Edington; 10 Nev. 215. Exparte Crawford, 24 Nev. 91. 12 Nev. 87, 18 Nev. 331, 19 Nev. 178. 11 Nev. 429, 9 Nev. 71, 41 P. 538 and 615, 34 P. 414, 28 S. W. 1086, 63 N. W. 1065, 15 S.C. 987, 58 N. W. 386, 24 S. W. 423.

Naturaly enough many of the most ardent opponents of any limitation to the time for labor in unhealthy or unsafe pursuits are actuated more by anxiety to profit by the extra hours of toil of others than by any desire to labor so long themselves, while some of the world's most eminent minds have favored such limitation. Before the invention of many of the most ingenious labor saving devices with which we are blessed today, and consequently when the effort required to support the world was much greater per capita than now, our ever esteemed patriot, statesman and philosopher, Franklin, proclaimed that by the proper or equal distribution of labor no one would need to toil one half so long as the time for which petitioner contends. President Harrison in his annual messages of 1889, 1890, 1891 and 1892 urged upon Congress the necessity of requiring appliances to prevent injuries in the coupling and braking of cars engaged in interstate commerce and legislation to that end was sustained recently by the Supreme Court of the United States in Johnson against the Southern Pacific Company. Count Tolstoi favors the reduction in the hours of labor for employees in factories and mills and President Roosevelt in his message to Congress last December advocated a restriction in the hours for trainmen. While governor of New York he recomended and signed a bill which made an eight hour day for the employees of that State. He and Presidents, Grant, Cleveland and McKinley favored the limitation to eight hours of labor on government work.

The fact that the avocations mentioned in the Statute, including the one of milling ores, are injurious to the health of many of the men following them, if not to some extent to all, justified the action of the legislature, and we think that in order to give due effect to its terms it should be enforced against all coming within the classes specified.

The defendant is remanded to the custody of the Sheriff of Lyon County.

TALBOT J.

I concur in the result arrived at in the foregoing opinion and my reasons therefore will hereafter be filed.

FITZGERALD C. J.

The case having been submitted during the October Term Norcross J. did not participate.

OFFICIAL COUNT OF STATE FUNDS

STATE OF NEVADA,

County of Ormsby, s. s.

John Sparks, W. G. Douglas and James Sweeney, being duly sworn severally say they are members of the Board of Examiners of the State of Nev., that on the 15th day of Feb. 05 they, (after having ascertained from the books of the State Controller the amount of money that should be in th Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as follows:

Coin	334,595 27
Paid coin vouchers not returned to Sontroller	13,318 72
Total	357,913 99
State School Fund Securities.	
Irredeemable Nevada State School Bond	380,000 00
Mass. State 3 per cent bonds	537,000 00
Nevada State bonds	255,100 00
Mass. State 3½ per cen bonds	189,000 00
United States bonds	215,000 00
Total	$1,934,013 99

W. G. Douglass
John Spaks
James G. Sweeney

Subscribed and sworn before me this 15th day of Feb. A. D. 1905
J Doane
Notary Public, Ormsby county, Nev

The finest in the line of wood can be found at Kattleman's. He will deliver the same cut or in full length to any part of the city and his price is reasonable.

We are closing out our line of stationery. School children as well as anybody else can get bargains in the above line by calling at the Meyers Mercantile Co's store.

Overcoats at the lowest prices at the Emporium. Get in before they are gone.

Wiard has all the latest magazines and novels.